

*American Federation of Musicians
Symphonic Services Division
Canada*

May 2002

**LOYALTY vs. FREE SPEECH:
Can We Talk?**

Matters affecting Canadian symphonic orchestras are a matter of public trust and should therefore be the subject of public discussion. Never has this been more important than in the current environment, in which a good third of those who govern Canada's major orchestras have directed their energies towards the goal of reducing musicians' compensation. It is to be expected that musicians will want to engage in public debate about this particular approach to arts management. It is important, however, that musicians understand that their constitutional right to freedom of expression is to an extent limited by their obligation of loyalty to those who engage or employ them. Here, then, is a guide to "safer debating."

Generally speaking, individual workers should resist the temptation to make public statements, either in writing or verbally, that could be construed as damaging to the organization that engages or employs them. Speaking out as an individual can put a musician at risk of discipline and can undermine the efforts of elected workplace and Local representatives.

When involved in negotiations, it is best to let the Local or Players' Association do the talking. If a symphonic musician happens to also be a member of the Local board, the musician may speak freely as long as the Local or Players' Association "hat" is worn during public discussion.

Questions often arise regarding letter campaigns. Musicians of an orchestra that is involved in a labour dispute often ask their OCSM orchestra peers to write letters to the board members and managers of the orchestra involved in the dispute. The point of view of the musician writing the letter may not coincide with the views of that musician's engager/employer. It could be considered unfair for a musician to trade on his/her status as a member of a particular organization, i.e. to "borrow on" its good name. A musician should therefore refrain from signing as e.g. "Second

Kazoo in the Frostbite Philharmonic" and should instead identify him/herself as either "a concerned musician" or, if applicable, as a representative of either the Local or the Players' Association.

In the event of a strike or lockout, all legal issues surrounding loyalty and free speech are pretty much suspended. This does not mean that anarchy is a good strategy. As a member of a bargaining unit, it is important to work with your elected representatives to present a united front, usually through a designated spokesperson. As a member of a negotiating or media relations committee, plan carefully and get advice before proceeding. It is possible to conduct a public campaign in a dignified and respectful way. By doing so, the musicians' cause is advanced, the public interest is served, and there is minimal long-term damage to your organization.

TAX STATUS UPDATE

The Canada Customs and Revenue Agency (CCRA, formerly Revenue Canada) has come forward with long-awaited draft guidelines for determining the employment status of artists (i.e. employee or self-employed). The document was prepared at the request of the arts community following discussions at the November 22, 2000 Chalmers Conference.

On January 9, 2002 the federal Department of Canadian Heritage (DCH) hosted a meeting in Ottawa for the purpose of discussing the draft guidelines. The meeting involved DCH officials as well as representatives from the Canada Customs and Revenue Agency (CCRA, formerly Revenue Canada), the Human Resources Development Commission (HRDC), and the arts community, including management and artists' organizations. Many concerns were raised during the meeting. Because of the potential impact of the document and the complexity of the issue, the arts community was granted an additional six months to provide comments. The draft document will be held in abeyance until the feedback has been considered. So where does that leave us? A few things have become clear.

- *The CCRA has not targeted the cultural sector and has no plans to do so. Rulings will be made only at the request of individuals or organizations.*
- *There will not be a blanket ruling for orchestras. Decisions will continue to be made based on the facts of each situation.*
- *Arts organizations will not be treated differently from other industries. Rulings will continue to be based on the application of what is known as the "four-fold test" i.e. control, ownership of tools, chance of profit/loss, and integration.*
- *The onus is on the organization to become familiar with the letter and spirit of the law and to comply as appropriate.*
- *Taking a reactive stance can be costly. Penalties and retroactive assessments are likely to be considerably lighter for those organizations that request a ruling and/or voluntarily comply with the legislation.*

The implications of these clarifications will vary from one organization to the next. It is important to remember that action taken by one Canadian orchestra affects many others. For more detailed information please contact AFM Symphonic Services.

CANADIAN ORCHESTRAS IN CRISIS:

Overview:

Canadian symphonic musicians have endured an unprecedented level of strikes, lockouts, and concessionary bargaining outcomes this season. This may be management backlash in response to strong bargaining outcomes in the late 1990's, or it could be due to widespread demands by granting agencies that symphonic organizations achieve ongoing budgetary surpluses. Further adding to the problem is the fact that Canadian funders and managements are presenting a picture of general decline and failure, rather than highlighting the many successes in the Canadian symphonic world (See "Good News" in the February 2002 issue of *Una Voce*.) This is in complete opposition to the sunny picture of symphonic music in the U.S. being presented by the American Symphony Orchestra League (U.S. counterpart to our Orchestras Canada).

AFM Action Update:

The AFM met with a caucus of western orchestras in January and eastern orchestras in February. (Quebec was not included because they operate in a very different environment.) These meetings generated excellent feedback and many useful ideas. At the industry level, the

AFM approached Orchestras Canada last December with a request to make this crisis a priority issue. An in-depth discussion followed at the January OC board meeting, including representatives from OCSM and the AFM. The result was an Orchestras Canada proposal for a series of cross-country meetings and a culminating summit. The AFM and OCSM have been invited to participate in planning these meetings, which will involve all stakeholders in the symphonic industry.

The objective is to find a better way: a better way for funders to provide incentives for organizations so that they achieve fiscal health without jeopardizing artistic excellence; a better way for boards, managers, conductors, and musicians to resolve their differences and to work together on matters of mutual interest; and finally, a better way to promote and support symphonic music in Canada.

SSD ASSISTANT

The Symphonic Services Division, AFM Canada, seeks to employ an Assistant.

- Half-time position. AFM benefit package including EPW.
- Starting date July, 2002.

The following would be considered assets:

- knowledge of collective agreements
- Experience working with AFM Locals
- Knowledge of both official languages
- Computer skills

Applicants should forward a resume no later than June 10th, 2002 to:

Symphonic Services Division
American Federation of Musicians,
Canadian Office
75 The Donway West, Suite 1010
Don Mills, Ontario, M3C 3E9
Fax: 416-391-5165

Symphonic Services Department
Laura Brownell • lbrown@ican.net
Christine Little Ardagh • cardagh@afm.org
416.391.5161
800.463.6333